

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>Commonwealth Edison Company</b>	:	
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<b>Reconciliation of revenues collected under Rider EDA with the actual costs associated with energy efficiency and demand response programs.</b>	:	<b>Docket No. 10-0537</b>
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**POSITION STATEMENT OF THE STAFF  
OF THE ILLINOIS COMMERCE COMMISSION**

Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, respectfully submits its Position Statement in the above-captioned matter.

**I. PROCEDURAL BACKGROUND**

On August 31, 2010, Commonwealth Edison Company ("ComEd" or "Company") filed with the Illinois Commerce Commission's ("Commission") Chief Clerk, its Annual Report concerning the operation of its Energy Efficiency Demand Response and Adjustment Rider, Rider EDA, for the period beginning June 1, 2009 through May 31, 2010 ("Annual Report"). Also included with ComEd's Annual Report was supporting direct testimony. (ComEd Correspondence Dated August 31, 2010)

On September 9, 2010, the Commission initiated this proceeding for ComEd to present evidence to show the reconciliation of revenues collected under its Rider EDA with costs prudently incurred in connection with proper energy efficiency and demand response activities as defined in the tariffs of the Company for the period June 2009 through May 2010. (Order Commencing Reconciliation Proceeding, September 9, 2011, pp. 1 and 3)

On September 14, 2010, ComEd filed the previously mentioned Annual Report and supporting testimony in this proceeding. (Docket Sheet, September 14, 2010) On October 6, 2010 an initial status hearing was held in this matter. The matter was continued to February 3, 2011 in order for the parties to serve data requests, receive information and to develop their positions. (Tr., October 6, 2010, p. 3) The matter was

continued several more times (Notices of Continuance Dated, February 7, 2011; Id., May 2, 2011; Id., June 1, 2011 and Id., July 14, 2011) until a status hearing held on September 21, 2011. (Tr., September 21, 2011)

Prior to the September 21, 2011 status hearing, Staff filed its direct testimony. (Tr., September 21, 2011, p. 8) Staff filed the direct testimony of Scott Tolsdorf (Staff Ex. 1.0) and Jennifer L. Hinman (Staff Ex. 2.0). At the status hearing on September 21, 2011, counsel for the Company informed the parties and Administrative Law Judge ("ALJ") that the Company intended on filing a motion to strike portions of the direct testimony of Staff witness Hinman. (Tr., September 21, 2011, p. 9) The parties agreed to a schedule for the filing of ComEd's motion to Strike, responses and replies. (Id.) ComEd's motion was filed September 28, 2011, a Staff response was filed October 20, 2011, a ComEd Reply was filed November 20, 2011 and an ALJ ruling was issued November 29, 2011. A corrected ALJ Ruling was issued on December 7, 2011.

ComEd's motion was granted in part and denied in part. Generally as a result of the ALJ's ruling subject to the specifics set forth in the ALJ's ruling, three of Staff witness Hinman's four recommendations and supporting testimony were stricken. (ALJ Ruling, December 7, 2011) Another status hearing was held on December 6, 2011 at which time the parties agreed to further scheduling in this matter and the matter was continued to January 12, 2012. (Tr., December 6, 2011, p. 21) A status hearing was held on January 12, 2012, and the matter was subsequently continued by the ALJ to February 22, 2012. (Notice of Continuance, January 12, 2012; Tr., January 12, 2012) At the status hearing on February 22, 2012, the ALJ with agreement of the parties set a schedule for the filing of Staff and Intervenor rebuttal testimony and Company surrebuttal testimony. (Tr., February 22, 2012, p. 33) On March 22, 2012 Staff filed its rebuttal testimony (Rebuttal Testimony of Scott Tolsdorf, Staff Ex. 3.0 and Rebuttal Testimony of Jennifer L. Hinman, Staff Ex. 4.0), and the Company filed surrebuttal testimony (Surrebuttal Testimony of Michael S. Brandt and Martin G. Fruehe) on April 19, 2012.

An evidentiary hearing was held in this matter on May 10, 2012, at which time Staff's prefiled direct and rebuttal testimony (with Staff's Ex. 2.0 subject to the ALJ's corrected ruling of December 7, 2011) were all admitted into evidence. The Company's prefiled testimony and exhibits (Company Exhibits 1 through 6) were also admitted into evidence.

Also at the evidentiary hearing on May 10, 2012, at the request of Staff, the ALJ took administrative notice of ComEd's Rider EDA. Staff Cross Exhibits 1 and 2 (the Company's 2009 and 2010 Annual Incentive Plan and Staff Cross Exhibit 3 (Company's supplemental response to Staff Data Request ST 2.04 and Attachment Public) were also admitted into evidence by the ALJ. (Tr., May 10, 2012, pp. 26-27)

The ALJ marked the record heard and taken and a briefing schedule was set.

## II. STAFF POSITION

### A. Uncontested Issues

#### 1. Staff Witness Hinman's Recommendations

##### a. Comparison of Energy Efficiency ("EE") Budgeted vs Actual Expenditures

In her direct testimony, Staff witness Hinman made one of several recommendations which she believed would help ensure the Commission would have information necessary to evaluate ComEd's expenditures in future Rider EDA reconciliation proceedings. In particular Ms. Hinman recommended:

the Commission direct the Company to include in its Rider EDA Annual Report filed by August 31st of each year, a comparison of its EE Plan Year budgets versus actual EE expenditures by program-level and portfolio-level cost categories consistent with that presented in its EE Plan approved by the Commission. (ComEd Rider EDA, ILL. C. C. No. 10, Original Sheet No. 248.1). I recommend the Commission direct the Company to consistently and accurately classify, track, and report EE expenditures in its Rider EDA Annual Report by cost categories consistent with those proposed in the Company's EE Plan.

(Staff Ex. 2.0, pp. 6-7)

Ms. Hinman went on to explain that:

[c]urrently, the Company reports to the Commission its EE expenses in a different format than that provided in past EE Plan dockets. (See, e.g., ComEd PY3 Rider EDA Annual Report at 4; Staff Ex. 135 2.1 at 36). To better facilitate the review process in EE reconciliation proceedings and to aid in reviewing the reasonableness of proposed costs in future EE Plan proceedings, the Company should report Rider EDA expenses in reconciliation proceedings in the same format as it proposed the costs to the Commission in EE Plan approval proceedings.

(Id., p. 8)

Ms. Hinman further explained that:

[t]he Company's adherence to this recommendation is needed on a continuing basis in order to assist Staff in providing recommendations to the Commission and for the Commission to be able to efficiently evaluate the actions of the Company in execution of the Commission-approved EE Plans.

(Id., p. 9)

Ms. Hinman concluded that:

In future Rider EDA reconciliation proceedings, the Company should provide invoices and supporting documentation for any requested cost category by EE program and it should substantiate that these expenses

were reasonably and prudently incurred. I recommend the Commission direct the Company to report in its Rider EDA Annual Report filed by August 31<sup>st</sup> of each year for the annual reconciliation proceeding, the Company's EE expenditures by cost categories consistent with those provided in the Company's EE Plan. (ComEd EE Plan 1, Appendix A, Appendix D; ComEd EE Plan 2 at 14, Appendix E; Staff Ex. 2.1 at 1 – 6, 8, 12 – 22, 24). Further, I recommend the Commission direct the Company to include in its Rider EDA Annual Report a comparison of the EE Plan Year budgets versus actual EE expenditures by portfolio-level cost category and by program-level cost categories for each program consistent with those articulated in the Company's EE Plan approved by the Commission. (*Id.*).

(*Id.*, pp. 13-14)

Company witness Brandt indicated that "ComEd agrees to provide the comparison described by Ms. Hinman in a form that is substantially similar to the one she requests." (ComEd Ex. 3.0, p. 2) Mr. Brandt added that:

[b]ecause ComEd does not manage to the individual cost categories for each program, but allows the program manager the flexibility to manage to the total budget, ComEd will make every effort to report expenses in the same cost categories provided in the Plan. However, ComEd must retain the flexibility to identify the most appropriate individual cost category or categories for the various expenses, especially in cases where an expense cannot be clearly defined by one cost category, but rather goes across two or more categories.

(*Id.*)

While the Company has agreed to provide the comparison requested by Ms. Hinman, Ms. Hinman testified that the Commission's order should include language directing the Company to include in its Rider EDA Annual Report filed by August 31 of each year, a comparison of its EE Plan Year budget versus actual EE expenditures by program level and portfolio-level cost categories consistent with that presented in ComEd's EE Plan approved by the Commission. (Staff Ex. 4.0, p. 4 and 6) Ms. Hinman added in her rebuttal testimony that the "Company's direct testimony in reconciliation proceedings should justify significant shifts in expenditures in comparison to those forecasted in its approved EE Plan." (*Id.*, p. 6) The Company in its surrebuttal testimony does not address this point specifically, therefore, Staff assumes that the Company does not take issue with that recommendation as well.

Given the above, Ms. Hinman's Recommendation 1 along with the accompanying recommendation that the "Company's direct testimony in reconciliation proceedings should justify significant shifts in expenditures in comparison to those forecasted in its approved EE Plan" (*Id.*) appear to be uncontested. For all the above reasons, Staff recommends that the Commission order the Company to: (1) provide in its Annual Rider EDA Report a comparison of its energy efficiency Plan Year budgets versus actual energy efficiency expenditures by program-level and portfolio-level cost categories consistent with that presented in its energy efficiency Plan approved by the Commission; (2) consistently and accurately classify, track, and report energy efficiency

expenditures in its Rider EDA Annual Report by cost categories consistent with those proposed in the Company's energy efficiency Plan; (3) provide invoices and supporting documentation for any requested cost category by energy efficiency program and it should substantiate that these expenses were reasonably and prudently incurred in future Rider EDA reconciliation proceedings; and (4) include in its direct testimony in Rider EDA reconciliation proceedings justification for significant shifts in expenditures in comparison to those forecasted in its approved energy efficiency Plan.

**b. Courtesy filing of Independent Evaluation Reports in Rider EDA Reconciliation Proceedings**

Staff witness Hinman also made a recommendation that ComEd file the independent evaluation reports, completed pursuant to Section 8-103(f)(7) of the Illinois Public Utilities Act ("Act"), in its Rider EDA reconciliation proceedings. (220 ILCS 5/8-103(f)(7)) Ms. Hinman explained that those reports evaluate portfolio administrator performance and also provide an estimate of whether the Company implemented its portfolio in a cost-effective manner and thus the reports examine whether the Company's expenditures are providing net benefits to ratepayers. (Staff Ex. 4.0, p. 5)

The Company in its rebuttal testimony and surrebuttal testimony indicated that it agrees to file the reports in the requested dockets as a courtesy to Staff (Plan Year 2 evaluation reports would be filed in the Plan Year 2 reconciliation docket) for information purposes only once the reports become available. (ComEd Ex 3.0, pp. 2-3; ComEd Ex 5.0, p. 3) Company witness Brandt further added that he was not commenting on whether the reports are relevant to this proceeding. (ComEd Ex. 3.0, p. 3)

Ms. Hinman in rebuttal responded that putting aside the issue of whether the reports are relevant, she still recommended that the Commission include language in its final order for this proceeding that ComEd be directed to file the independent evaluation reports in the Annual Rider EDA reconciliation proceedings. (Staff Ex. 4.0, p. 5) It is Staff's position that the relevance of the reports can be addressed in the individual reconciliation proceedings. In its surrebuttal testimony, ComEd continued to take the position that it would file the reports in the reconciliation dockets. (ComEd Ex. 5.0, p. 3)

Given the above, this issue appears to be uncontested. Therefore, Staff recommends that the Commission order the Company to file the independent evaluation reports completed pursuant to 220 ILCS 5/8-103(f)(7) in the Rider EDA reconciliation dockets.

**c. Quarterly Reports to be filed in Original Closed Plan Dockets**

Ms. Hinman has a final recommendation not opposed by the Company. During informal conversations regarding the above mentioned reports, Staff also requested that the Company file "the quarterly status reports it provides to the Stakeholder Advisory Group in the original, closed Plan docket to which the quarterly status reports related." ComEd Ex. 3.0, p. 3) Similar to its position regarding the independent evaluation

reports, ComEd has agreed to file these quarterly reports as requested by Staff in the requested dockets “as a courtesy to Staff and for information purposes only.” (Id.)

Given the above, this issue appears to be uncontested. Therefore, Staff recommends that the Commission order the Company to file quarterly reports regarding the implementation of its energy efficiency portfolio with the Commission in the closed energy efficiency Plan docket to which the quarterly status report relates.

## **2. Staff Witness Tolsdorf’s Recommendations**

### **a. Recalculated Revenue Adjustment (Withdrawn by Staff)**

In his direct testimony, Staff witness Tolsdorf recommended an adjustment to restate the revenue generated through Rider EDA based upon the number of billed kWh. (Staff Ex. 1.0, p. 5) Mr. Tolsdorf recommended the adjustment since his calculated revenue did not reconcile to the revenue reported by the Company. (Id.) In its rebuttal testimony, the Company took issue with Mr. Tolsdorf’s adjustment. (ComEd Ex. 3.0, p. 3) After further consideration of the issue and in the interest of limiting the number of contested issues, Mr. Tolsdorf withdrew his adjustment. (Staff Ex. 3.0, p. 1)

Given the above this issue is uncontested.

### **b. Expenditure for Alcoholic Beverage (Unopposed by ComEd)**

In his direct testimony, Staff witness Tolsdorf noted something unusual came to his attention concerning an invoice submitted by the Company in response to Staff data requests with respect to the Company’s Rider EDA charges. Mr. Tolsdorf noted that there was a purchase of an alcoholic beverage for \$6 on an airline trip that was charged to Rider EDA. While the amount was miniscule Mr. Tolsdorf testified that it is not reasonable for ratepayers to pay for alcoholic beverages for ComEd employees. (Staff Ex. 1.0, pp. 7-8) Mr. Tolsdorf requested the Company address the issue in its rebuttal testimony and to respond whether the charge to Rider EDA for \$6 was an oversight or if not an oversight the rationale for Company policy to allow recovery from ratepayers for such an expense. (Id., p. 8) In its rebuttal testimony, the Company in order to narrow the issues indicated it would remove the cost of the alcoholic beverage from the costs recovered through Rider EDA. (ComEd Ex. 3.0, p. 6)

Given the above this issue is uncontested.

## **B. Contested Issue**

### **1. Staff Witness Tolsdorf’s AIP Incentive Compensation Adjustment**

The only contested issue in this proceeding that Staff is aware of is the Company’s insistence on seeking the recovery of incentive compensation costs paid under its Annual Incentive Plan (“AIP”) to incremental EE employees from rate payers through its Rider EDA. That issue comes down to the following two questions. Do incentive compensation costs for incremental EE employees have to be related to activities and programs approved in the Company’s energy efficiency Plan and (2) Do

those costs have to provide a benefit to ratepayers? It is Staff's position that the answer to both questions is yes. Yes, incentive compensation costs have to be related to activities and programs approved in the Company's energy efficiency Plan and yes, those costs have to provide a benefit to ratepayers.

Staff argued in its initial brief that under Rider EDA, ComEd is only allowed to recover incremental costs that are incurred by ComEd in association with Energy Efficiency and Demand Response Measures. (Commonwealth Edison Company, Rider EDA, 1<sup>st</sup> Revised Sheet No. 245) Energy Efficiency and Demand Response Measures under the rider means "activities and programs that are developed, implemented, or administered by or for the Company, or the Department of Commerce and Economic Opportunity (DCEO), that are related to energy efficiency and demand response plans approved by the ICC." (Id.) (Emphasis added) Mr. Tolsdorf took issue with the Company's recovery of AIP incentive compensation costs for incremental employees because the Company failed to show that the AIP costs related to energy efficiency measures. (Staff Ex. 1.0, p. 4) Staff witness Tolsdorf testified that the Company had provided no justification as to why the Company should recover for its incremental energy efficiency employees, those employees' AIP incentive compensation. (Id.) Mr. Tolsdorf explained that AIP uses metrics like frequency and duration of outages and there is no correlation between the duration of an outage and the number of CFLs installed during the program year or any other EE measure. (Id.) Accordingly, Mr. Tolsdorf made an adjustment for the AIP incentive costs. Also, as further explained in Mr. Tolsdorf's rebuttal testimony, in order for the AIP incentive compensation costs to be recovered from ratepayers ComEd needed to show that AIP provided a benefit to customers in terms of the energy efficiency programs. Since AIP is not tailored to energy efficiency measures recoverable under Rider EDA (Staff Ex. 1.0, p. 5), it was no surprise to Staff that ComEd was unable to show the necessary customer benefits to ratepayers due to AIP.

Staff further argued in its initial brief that It should also have been no surprise to ComEd that a showing of benefit to ratepayers due to AIP is the condition upon which incentive compensation cost recovery depends as that standard has been used by the Commission for years with respect to incentive compensation. Staff explained that the customer benefit standard has been applied by the Commission to ComEd at least as far back as ComEd's 2001 rate case, Docket No. 01-0423. In fact the Appellate Court noted the past Commission precedent on the issue of incentive compensation cost recovery and applied the same standard in the appeal of ComEd's 2005 rate case where the Appellate Court stated "there is ample precedent making a benefit to ratepayers a condition upon which the recovery of salary-related expense depends." (Commonwealth Edison Company v. Illinois Commerce Commission, 398 Ill. App. 3d, 510, 517 (2009)) The customer benefit standard was used most recently in ComEd's recent rate case, Docket No. 10-0467 ("The Commission has a long-standing policy of allowing Incentive Compensation costs when those costs benefit ratepayers ..." (Order, May 24, 2011, Docket No. 10-0467, p. 65). And, the Commission applied the same customer benefit standard in ComEd's 2007 rate case, Docket No. 07-0566. ("The utility can recover its expenses when it can prove that the expenses are reasonable, related to utility service, and of benefit to ratepayers or utility service." (Order, September 10, 2008, Docket No. 07-0566, p. 61) (Emphasis added) Finally, Staff further argued that in the Commission's original order for ComEd's 2005 rate case, Docket No. 05-0597, the

same customer benefit standard was applied by the Commission. In that order, the Commission directly addressed the standard for incentive compensation costs to be recovered. The Commission stated that:

All parties appear to agree on the standards the Commission should employ when deciding whether to allow a company to recover the cost of its incentive compensation program. In ComEd's previous rate case, Docket 01-0423, we stated that such expenses should be recovered if the incentive compensation plan has 'reduced expenses and created greater efficiencies in operations' and thus, it 'can reasonably be expected to provide net benefits to ratepayers.

(Original Order, July 26, 2006, Docket No. 05-0597, p. 95)

Staff argued in its initial brief that there is a long line of Commission orders requiring ComEd to show a customer benefit for incentive compensation pay in order for that pay to be recovered from ratepayers. While ComEd seems to have taken the position that it has been allowed 100% of its AIP costs in Docket No.10-0467 and therefore cost recovery is appropriate in this proceeding (ComEd Ex. 6.0, p. 3) ComEd is only allowed to recover through Rider EDA incremental energy efficiency costs (i.e., costs related to approved ComEd energy and efficiency and demand response activities and programs) (Rider EDA, 1<sup>st</sup> Revised Sheet No. 246), and the customer benefit required to be shown in this proceeding must be related to the incremental energy efficiency employees' efforts not the efforts of other ComEd employees.

Staff witness Tolsdorf first brought up the issue of customer benefit when he pointed out that the Company had failed to show how the incentive cost it sought to recover relate to energy efficiency or how the AIP had been tailored for ComEd's EE employees. (Staff Ex. 1.0, p. 3) Mr. Tolsdorf addressed the AIP plan again in his rebuttal testimony when he pointed out that Company witness Mr. Fruehe failed to consider in his testimony that incentive compensation costs are only allowed recovery when a Company shows that a customer benefit has occurred. Under ComEd's AIP plan, the incentive compensation paid is barely related to ComEd's incremental EE employees' efforts. Under the Company's AIP plan the base amount of incentive compensation paid to employees subject to the AIP Plan is the result of goal weights and KPI Performance pay out percentages. The product of these percentages results in a Preliminary weighted pay out percentage. The weighted pay out percentage is then applied to an eligible salary amount. Eighty-five percent of the goal weights in the AIP Plan relate to ComEd's: (1) O&M expense, (2) capital expenditures, (3) SAIFI, (4) CAIDI, OSHA recordable rate, and (5) and customer satisfaction. None of those goal weights relate to energy efficiency let alone energy efficiency activities and programs approved in ComEd's plan. The other fifteen percent is related to Focused Initiatives and Environmental Index. (Staff Cross Ex. 2.0, p. 1) However, for 2009 none of the Focused Initiatives and Environmental Index related to energy efficiency (Tr., May 10, 2012, p. 15) and for 2010 only 2 of the 13 Focused Initiatives and Environmental Index related to energy efficiency. (Id., p. 18) The significance of which was addressed by Mr. Tolsdorf when he testified on redirect, that for the 2010 AIP Plan the impact of energy efficiency performance on incentive compensation is at most 2% of the total incentive compensation paid. (Id., p. 58; Staff Cross Ex. 2, p. 10) Stated another way, ninety-eight percent of incentive compensation paid to incremental energy efficiency



employees has nothing to do with energy efficiency. (Id.) As a result, the efforts of the incremental EE employees have very little to do with the incentive compensation which the Company seeks to recover from ratepayers through Rider EDA. This is further buttressed by the testimony of Company witness Fruehe who admitted on cross examination that EE employees do not do Underground Cable Program work, Substation Transformer Maintenance Work and Vegetation Management for Distribution and Transmission work, which compose some of the other eleven Focused Initiatives and Environmental Index upon which incentive compensation is based. (Tr., May 10, 2012, pp. 17-18) Because AIP is not tailored to energy efficiency and demand response measures approved in ComEd's Energy Efficiency Plan that are ultimately implemented by ComEd for which ComEd seeks cost recovery through Rider EDA, ComEd is unable to meet the customer benefit standard set forth in past Commission orders that go at least as far back as 2003.

Finally, Staff noted that this is the first time the issue of AIP cost recovery has been brought to the Commission's attention by Staff in a ComEd Rider EDA reconciliation proceeding. (Tr., May 10, 2012, p. 54) Therefore, any argument that AIP incentive compensation costs may have been previously recovered from ratepayers through ComEd's Rider EDA is not a valid reason for the recovery of the AIP costs in this reconciliation proceeding as the Company suggests. (ComEd Ex. 6.0, p. 3) As set forth above, allowance of these costs through Rider EDA would be contrary to several prior Commission orders regarding ComEd rates with respect to incentive compensation cost recovery in general.

## **2. Final Reconciliation [Appendix A]**

Rider EDA requires an annual reconciliation of the revenues accrued through the application of the applicable EDA charge with the incremental costs incurred for the reconciliation period. Staff attached to its initial brief Appendix A (ICC Staff Ex. 3.0, Schedule 3.1) which provides a reconciliation beginning with the Company's proposed revenues and expenses, Staff's adjustment for incentive compensation costs, and the resulting revenues and expenses proposed by Staff. Staff's adjustment results in a Program Year 2 Ordered Reconciliation Factor of \$262,929 to be refunded in ComEd's first Rider EDA filing following the Final Order in this docket and should be approved by the Commission.

## **III. CONCLUSION**

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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